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Mailed: 9-4-07

In re application of
Hidetoshi Ohnuma : DECISION ON
Serial No. 10/603,689 : PETITION
Filed: June 26, 2003 :
For: EXPOSURE METHOD, MASK FABRICATION METHOD, FABRICATION
METHOD OF SEMICONDUCTOR DEVICE, AND EXPOSURE APPARATUS :

This is a decision on the PETITION UNDER 37 CFR 1.181 TO WITHDRAW THE FINALITY
OF THE OFFICE ACTION, dated July 23, 2007.

On January 12, 2007, a non-final Office action was mailed to applicants. The Office action contained rejections of claims 21-30 under 35 USC 102 over Irie et al. A reply to the Office action was filed on April 3, 2007. In the reply, various amendments to several of the claims were made, including amending claims 25 and 26 into independent form.

On July 11, 2007, a final Office action was mailed. Among the rejections was a new grounds of rejection of claims 25 and 26 under 35 USC 103 (a) rejection over the combination of Irie et al. and newly cited art to Gabriel et al. The examiner stated in the office action that the new grounds of rejection were necessitated by Applicant's amendments to the claims and the Office action was made final.

Petitioner has argued that the finality of the last Office action is improper. Petitioner argues that the new grounds of rejection were not necessitated by Applicant's amendments.

DECISION

Section 706.07(a) of the MPEP states:

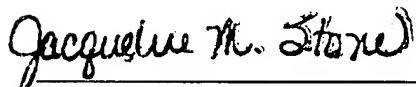
706.07(a) Final Rejection, When Proper on Second Action

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

Upon review of the prosecution history, the examiner's position is correct. As correctly indicated by the examiner in paragraph 1 of the Final Office action of July 11, 2007, "Claim 25,

filed December 27, 2006, does not have the added subject matter "forming an absorption film on said V-line reflective mask, said absorption film being adapted to absorb said light". Claim 26, filed December 27, 2006, does not have the added subject matter, "forming an absorption film on said H-line reflective mask, said absorption film being adapted to absorb said light". The text of any added subject matter must be shown by underlining the added text." Therefore, Claims 25 and 26, as rejected under 102 over Irie et al. in the January 12, 2007 non-final Office Action, did not have the limitations of "forming an absorption film on said V-line reflective mask, said absorption film being adapted to absorb said light" and "forming an absorption film on said H-line reflective mask, said absorption film being adapted to absorb said light". These limitations were first included in claims 25 and 26 with the reply of April 3, 2007. In the final Office action of July 11, 2007, the examiner introduced the Gabriel et al. reference to meet these new limitations in claims 25 and 26, as specifically indicated in paragraph 5 of that final Office action. Therefore, the applicant's amendments did indeed necessitate the new grounds of rejection of claims 25-26 over Irie et al. in view of Gabriel et al. Accordingly, the examiner properly made the July 11, 2007 Office action final.

The Petition is **DENIED**.



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